

**Subcommittee on Livestock and Horticulture
The Committee on Agriculture
U.S. House of Representatives
1300 Longworth House Office Building**

**Comments by the National Food Processors Association
On
Country of Origin Labeling Requirements under the
Farm Security and Rural Investment Act of 2002
Submitted October 1, 2003**

Mr. Chairman, Ranking Member Ross and Members of the Subcommittee. I want to thank you for providing an opportunity to comment upon this matter.

I am Kurt Buckman, Director of Quality Systems Management for Birds Eye Foods, which has major facilities in California, Georgia, Minnesota, New York, Ohio, Pennsylvania, Texas, Washington and Wisconsin. I am here representing the National Food Processors Association, of which Birds Eye Foods is a member. NFPA is the voice of the U.S. food processing industry on scientific and public policy issues involving food safety, food security, nutrition, technical and regulatory matters and consumer affairs, and its members produce processed and packaged fruit, vegetable, and grain products, meat, poultry, and seafood products, snacks, drinks and juices, or provide supplies and services to food manufacturers.

I am here to address specific concerns that the food processing industry has with USDA's country of origin labeling requirements and Public Law 170-171. Under the Farm Bill, the approach USDA has taken to country of origin labeling would be unnecessarily burdensome and operationally impractical for both processors and retailers. The Guidelines would "over-regulate" by prescribing country of origin labeling rules for products already required to display such labeling, creating the prospect of duplicative, confusing, and even conflicting requirements. NFPA urges the Committee to reexamine these onerous counterproductive mandates and restructure the law enabling compliance with the intent without the unintended consequences.

I wish to briefly highlight several specific concerns:

The food industry has an ongoing requirement for country of origin labeling that predates the Farm Bill. Products of "foreign origin," as determined under US tariff laws, already are subject to country of origin labeling under a comprehensive set of regulations administered by the Customs Bureau. For example, Customs' regulations expressly require that packages of foreign-origin frozen produce be labeled so that the country of origin will be known by the "ultimate" purchaser of the product.

The USDA voluntary program covers food categories that are clearly processed foods. These include frozen products, fruits and vegetables and processed peanuts. Frozen produce is a processed product because it requires precise cutting and blending of raw

vegetables, steam blanching, and freezing by a technically sophisticated process. Peanuts in mixed nut products and other mixed snack food products also have undergone processing. USDA's guidance, given the statutory definitions used to identify covered commodities, conflicts with the explicit exclusion for processed food ingredients in the Farm Bill. I attribute this to wording in Public Law 107-171 directing that covered commodities include "perishable agricultural commodities", defined by USDA to include processed foods like frozen foods and peanuts.

Bagged salads are also subject to the USDA country of origin labeling requirements. However, bagged salads are composed of processed ingredients, are subject to existing country of origin labeling requirements, and should not be subject to additional labeling mandates.

Although the Farm Bill does not require records and verification at the farm level, it does contain a stiff penalty provision and burdensome 2 year records provision at the retail level for non-compliance. It makes no sense to assign retailers full legal accountability for notice of country of origin marking for processed foods. Consequently a costly and burdensome chain of records showing origin must be created at every retail location. Several retailers, having between 50 and 100 stores, have told me of a \$5 million initial cost and \$2 to \$3 million expected annual operating cost increases thereafter.

Customs has jurisdiction over the country of origin marking requirements for imported products at port of entry as well as the labeling of packaged products offered for sale in the United States and containing imported ingredients including those repackaged in the U.S. The labeling requirements established by the Farm Bill raise problems for food processors in determining what labeling requirements apply to specific products. For packaged food products, Customs' requirement is that the package bears a statement "Product of Country X" with "X" representing the country in which the product was prepared and packaged in its final form. This statement would not satisfy the Farm Bill provision because the country in which processing occurred would also need to be stated, if different from the country of origin.

Another area of confusion between the USDA and Customs programs concerns what is meant by "substantial transformation." It will be difficult to determine what the required label statement would be. Under the new USDA rule the label statement "Grown and packed in Country X and Processed in the United States" applies however labeling as "Product of Country X" applies under Customs' requirements or not at all if substantially transformed.

The labeling requirements under the Farm Bill are extremely complicated and technologically difficult to achieve. Order of predominance rules for country of origin marking cannot be operationalized. This will cause frequent and costly label changes or extraordinary spending on sophisticated marking equipment, if such equipment exists, providing minimal benefit to consumers. For example, countries will be required to be listed in the order of the predominance of the ingredient by weight in a mixed product.

Blending technology in frozen processed foods is volumetric and percentages of components do vary among bags creating an untenable percentage marking scenario. Changes in the amount of a commodity from a given country could require a reordering of the list and a new label, even though there is no change in the originating countries.

The food industry is currently faced with complying with the Farm Bill country of origin labeling requirements on September 30, 2004. As of today, we have neither final guidance nor regulations. Retailers are unprepared to meet mandatory 2 year records requirements at retail stores and this is further hindered by absence of standardized records systems to meet this new and as of yet undefined requirement.

Products covered by country of origin rules are entering commerce now, before mandatory requirements become effective. Covered foods offered for retail sale come September 30 will not all have been packaged under industry programs to satisfy the USDA country of origin labeling requirements. We face financial risk due to non-compliance, business disruption, and costly enforcement penalties.

The statute does not make clear that labeling or recordkeeping requirements will be necessary on products packaged before the date the mandatory rules become effective. To require labeling to be in place at the store level for such products will have the effect of making the statute mandatory on the day it was enacted.

Finally, no recognition is given to State or regional programs that identify the origins of foods. We believe that State and regional labeling programs are designed or could be designed to provide proper documentation that foods included in the program do, in fact, originate in that State or region of the United States. For example, labeling product at retail "Washington State Apples" clearly communicates to the consumer that it refers to a geographic region in the United States.

In conclusion, the current requirements established by the Farm Bill and USDA's guidance are seriously flawed. Another look at Public Law 170-171 is needed to exempt all processed foods and USDA's voluntary country of origin program should not become mandatory without significant and substantial change.

Thank you for the opportunity to testify on this important issue, and I would be pleased to answer any questions you have.